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Supreme Court, U.S.
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APPENDIX A-OPINION·ORDER ELEVENTH CIRCUIT·DATE·
FEBRUARY 1, 1999

IN THE UNITED STATES COURT OF APPEALS FOR THE

THE ELEVENTH CIRCUIT

No. 98-4178
Non-Argument Calendar

D.C. Docket No. 95-2256-CIV-LENARD

Jose J. Hoyos, Individually and
on behalf of all other persons
similarly situated,

Plaintiff-Appellant,

versus

United States Of America,
Department of Veterans Affairs, et al.,

Defendant-Appellees.

Appeal from the United States District
Court for the Southern District of Florida

(February 1, 1999)

Before Anderson, Carnes and Marcus, Circuit Judges.

PER CURIAM:

Appe. A

Jose Hoyos appeals two orders of the district court that, respectively, (I) granted summary judgment to the United States in his pro se lawsuit for failure to comply adequately with his Freedom of Information Act ("FOIA") request for records, and (ii) prohibited him from filing any further papers in the United States Court for the Southern District of Florida without a judge's permission. The instant case stems from an employment dispute regarding Hoyos' termination from the Veteran's Administration-hospital in Miami, Florida ("VA"). Hoyos originally filed a complaint in federal district court alleging employment-related causes of action. Subsequently, however, he filed an amended complaint alleging only FOIA violations. That amended complaint, stripped of any averments regarding employment-related issues, necessarily became the operative document. Hence, Hoyos cannot for the first time on appeal resurrect matters that were pleaded in his original complaint but superseded in his amended complaint.1

We find that Hoyos' challenges to each of the-district court's orders are without merit. With-respect to the summary judgment order, Hoyos' cause of action was under 5 U.S.C. § 552 (a)(4)(B) to-obtain records that he alleged the VA wrongfully-withheld from a FOIA request he submitted on October 27, 1995. Specifically, Hoyos south "the names and addresses of all the federal employee's [sic] and the reason for their removal from the VA Hospital in Miami Florida. From 1970 through present. [sic]"2 Interpreting this as request for information on all

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1 To the extent that Hoyos' mostly unintelligible argument on appeal includes a contention that the district court erred in denying him leave to amend his complaint a second time to re-allege the original wrongful discharge cause of action, from our independent review of the record it appears that he never attempted to amend his complaint to re-allege that cause of action. Although he repeatedly moved to amend and was denied on various grounds, these motions dealt with other matters, such as adding or substitution or defendants.

federal employees who had been involuntarily removed or discharged for cause from the VA, the government provided the reasons for removal, but withheld the names and addresses of individuals, citing FOIA-exemption 6, 5 U.S.C. § 552(b)(6), which exempts from FOIA's coverage "personnel and medical files and other files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In FOIA litigation, the government has the burden of proving that an exemption was properly invoked in its decision to withhold information. Ely v. Federal Bureau of Investigation, 781 F.2d 1487, 1489-90 (11th Cir. 1986). The determination as to whether the release of information would constitute a "clear unwarranted invasion of personal privacy" requires a balancing of the individual privacy interests at stake againts the public interest, if any, in disclosure. U.S. Department of State v. Ray, 502 U.S. 164, 175-76 (1991). We agree with the district court that releasing the indentities of individuals fired from the VA would be a clearly unwarranted invasion of personal privacy and that there is little public interest in access to those identities, especially when the reasons for removal--the information that truly bears upon the agency's conduct, which is the focus of FOIA's concern-were readily made available. Cf FLRA v. U.S. Department of Defense, 977 F.2d 545, 547-49 (11th Cir. 1992) (holding that individuals have as significant privacy interest in their addresses and that no public interest would be served by providing a labor union with a listing of the addresses of non-union federal employees). In addition, Hoyos's argument that the affidavit of Anthony D. Evans (the responsible official for FOIA compliance at the VA) in support of the

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2 In his October 27, 1995 letter, Hoyos also requested grade/salary, job title, and permanent work-location information for ten, specifically-named employees. The VA apparently complied with this request, except that information on one of the ten individuals wa not available because he was retired, and Hoyos apparently does not complain about this aspect of the FOIA request.

government's motions for summary judgment was insufficient because made without personal knowledge is wholly without merit. 3

We hold also that the district court's prohibiting Hoyos from engaging in further litigation without permission was warranted. The record reflects that in the instant case and related case, Hoyos has frivolously sued just about everyone even remotely associated with the VA, has moved to disqualify magistrate judges and district court judges for no reason other than that they ruled against him, has propounded voluminous discovery, has filed complaints regarding attorneys in the case with the Office of Professional Regulations, and has burden the-district court with over 130 motions and notices, many of them duplicative. The mountain of papers that Hoyos needlessly created is disruptive and puts a substantial burden on the district court and diverts resources from other cases. The district courts injunction is not an absolute bar; further litigation will be permitted if Hoyos obtains permission. We have upheld pre-filing screening restrictions on litigious plaintiffs

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3 Hoyos argues also that summary judgment was improper because the district court did not give him ten days notice required by Fed. R. Civ. 56(c) as interpreted by Griffith v. Wainwright, 772 F.2d 822, 825 (11th Cir. 1985). That case requires that "an adverse party must be given express, ten-day notice of the summary judgment rules, of his right to file affidavits or other material in opposition to the motion, and of the consequences of default," Id. We have recognized a harmless error exception to the ten-day notice rule in Donaldson v. Clark, 819 F.2d 1551, 1555 n.3 (11th Cir. 1987) (en banc), and Denis v. Liberty Mut. Ins. Co., 791 F.2d 846, 850 n.6 (11th Cir. 1986),

in factually indistinguishable, see Martin-Trigona v. Shaw, 986 F.2d 1384, 1387 (11th Cir. 1993), and feel that the district court was well within its discretion in imposing this order. 4

AFFIRMED.

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where the party who lacked notice nevertheless submitted all of the evidence he would have produced had he received notice, and demonstrated awareness of the proper standard under Rule 56. The harmless error exception applies here. The granting of summary judgement depended on a discrete legal issue: whether Exemption 6 to FOIA covered Hoyos' request. Cf. Miscavige v. IRS, 2 F.3d 366, 369 (11th Cir. 1993) noting that generally, FOIA cases should be handled on motions for summary judgment once the documents at issue are properly identified). The district court had before it all of the material documents that it needed to decided that question, and submitting additional evidence would have served no purpose.

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4 No constitutional problem is raised by pre-filing screening restriction such as those in the instant case. Procup v. Strickland, 792 F.2d 1069, 1073-74 (11th Cir. 1986) (en banc).

APPENDIX B-ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT FROM THE DISTRICT COURT DATED JANUARY 27, 1998.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOSE J. HOYOS,

Plaintiff,

vs.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

UNITED STATES DEPARTMENT OF VETERANS AFFAIRS,

Defendant.
_____/

THIS CAUSE comes before this Court Defendants motion for summary judgment (D.E.104).

In October 1995, Plaintiff Jose Hoyos (Hoyos) filed this action, based upon the Freedom of Information Act (FOIA), 5 U.S.C. & 552a(b), against Defendant United States Department of Veterans Affairs (Veterans Affairs), to obtain the personnel records of all employees of the Veterans Affairs Hospital in Miami who have left employ of the hospital since 1970. Veterans Affairs subsequently provided Plaintiff with all the files requested, except those of hospital employees who had been fired. With respect to discharged employees, Veterans Affairs has provided Plaintiff with the reason for its dismissal of each of the employees, but has refused to give Plaintiff those employees' names and addresses, claiming that such information is exempt from disclosure under 5 U.S.C.(b)(6).

On March 29, 1996, Veterans Affairs filed a motion for summary judgment. A motion for summary judgment may be granted only if no genuine dispute exist as to any material fact. Fed. Civ. P. 56(c). In deciding whether there is a genuine issue of material fact, the Court must view the pleadings, affidavit and other evidence in the record"in the light most favorable to the non-moving party." Retina Associates, P.A. v. Southern Baptist Hosp. of Florida., 105 F.3d 1376, 1380 (11th Cir. 1997).

Section 552(b)(6)of the FOIA exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clear unwarranted invasion of privacy." 5 U.S.C.§552(b)(6). Veterans Affairs contends that disclosing the names and addresses of the Miami Veterans Affairs Hospital's discharged employees would constitute a clear unwarranted invasion of privacy. A court must balance the private interests of disclosure against the public interests of disclosure in order to determine whether disclosure would constitute a 'clear unwarranted invasion of privacy.' Federal Labor Relations v. U.S. Department of Defense, 977 F.2d 545, 547 (11th Cir. 1992). In United States Department of Justice v. Reporters committee for Freedom of the Press, 489 U.S. 749, 772, 109 S.Ct. 1486, 1481 (1989), the Supreme Court explained that the public has an interest in knowing

> about what their government is up to. Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but reveals little or nothing about an agency's own conduct.

(citations omitted). The names and addresses of discharged Miami Veterans Affairs Hospital employees would reveal nothing about the hospital's conduct. See Federal Labor Relations Authority, 977 F.2d at 547-48. Therefore, the public has no interest in knowing those names and addresses. Furthermore, an employee who has been fired has a significant interest in keeping that information private, if for no other reason than to avoid the possibility of embarrassment. Consequently, this Court must conclude that private interests of Miami Veterans Affairs Hospital's discharged employees outweigh the public interest in access to those employees' names and addresses. Releasing such information to Plaintiff would thus constitute a clear unwarranted invasion of privacy. Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendant Veterans Affairs motion for summary judgment be GRANTED. The Clerk is directed to close this case.

DONE AND ORDERED in Chambers, at Miami, Florida on 27 day of January 1998.

Joan A. Lenard
United States District Judge

cc: Carole M. Fernandez, Esq.
Jose J. Hoyos, Pro Se

APPENDIX C-ORDER FROM ELEVENTH CIRCUIT DENIED PETITION FOR REHEARING DATED MARCH 25, 1999.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-4178

JOSE J. HOYOS, Individual and
on behalf of all other persons
similarly situated,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA
DEPARTMENT OF VETERANS AFFAIRS,
et al.,

Defendants-Appellee.

On Appeal from the United States District Court for
the Southern District of Florida

ON PETITIONS (S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC (Opinion_____,11th Cir., 19__, _____F.2d_____).

Before: ANDERSON, CARNES and MARCUS, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc

are DENIED.

Appe(C)

APPENDIX D-AFFIDAVIT OF ANTHONY EVANS LETTER OF PETITIONER DATED OCTOBER 27, 1995.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOSE J. HOYOS,	
PLAINTIFF,	
	CASE NO.95-2256-CIV-LENARD
vs.	
UNITED STATES OF AMERICA, et al.	
DEFENDANT.	

AFFIDAVIT

ANTHONY D. EVANS, being duly sworn, deposes and says:

1. I am the Supervisor Program Assistant-Release Of Information (ROI) of the Health Information Management Section (136D), Medical Administration Service (136), Department of Veterans Affairs Medical Center, 1201 N.W. 16th Street, Miami, FL 33125. As such, I am the employee responsible for the processing of Freedom of Information Act (FOIA) requests received by the Medical Center. FOIA requests are logged in and routed to the section where the requested information is believed to be maintained. The requested information is returned to my section where it is reviewed and an appropriate response prepared.

2. By letter dated October 27, 1995 (Exhibit 1), to Thomas C. Doherty, Director, Miami VA Medical Center, the Plaintiff, made a Freedom of Information Act (FOIA) request for the following information:

Appen D

a. The grade, salary, job title, and permanent work location for the following federal employees, at the Miami VA Medical Center: Thomas C. Doherty, Wayne Johnson, Larry Brinkman, Catherine Byrd, Juliemer Santiago, Arnold Berkowitz, Diane Nealy, Anthony Soldo, Gregory Rhodes, Robert M. Clark.

b. The names of all the federal employees and the reason for their removal from the VA Hospital in Miami, Florida. From 1970 through present.

3. By letter dated November 13, 1995 (Exhibit 2), the Miami VA Medical Center acknowledge receipt of Plaintiff's FOIA request and informed him the VA was in the process of researching his request. Plaintiff was also given the name and phone number of the Supervisor, Health Information Management Section in the event he had any questions.

The Department of Veterans Affairs Medical Center weighed the public and privacy interests at stake in this instance. The former employees of the agency were determined to have a substantial personal privacy interest in the fact that they had been "removed"/"fired" from employment with the Department of Veterans Affairs (the reasons for the removal actions would not fall within the exemption--see paragraph 8). The agency was unable to identify any significant qualifying public interest in disclosure because the disclosure of the identities of the individuals who were "removed"/"fired" would not reveal any substantial information about the workings of the VA. There being a substantial privacy interest and no significant public interest, release of the information was determined to be an unwarranted invasion of the personal privacy of the former employees. Plaintiff's request for this information was therefore denied.

10. The Department of Veterans Affairs has released all non-exempt information responsive to the Plaintiff's request to the Plaintiff.

I declare under the penalty of law that the foregoing is true to the best of my knowledge, information and belief.

March 28, 1996

ANTHONY D. EVANS
Supervisor, Program Assistant

Sworn and subscribed to before me Miami, Florida March 28, 1996.

(Notary Public)

William H. Biagi

October 27, 1995

Mr. Thomas C. Doherty, VA Director
Department of Veterans Affairs
Miami Medical Center
1201 N.W. 16th Street
Miami, FL 33125

CASE NO. 95-2256

Dear Mr. Doherty:

UNDER THE FREEDOM OF INFORMATION ACT, 5 U.S.C. SUBSECTION 552, I AM REQUESTING ACCESS TO, OR COPIES OF THE FOLLOWING:

1. The grade, salary, job title, and permanent work location for the following federal employee's at the Miami Medical VA Medical Center.

2. Thomas C. Doherty, Wayne Johnson, Larry Brinkman, Catherine Byrd, Juliemer Santiago, Arnold Berkowitz, Diane Nealy, Anthony Soldo, Gregory Rhodes, Robert M. Clark.

3. The names of all the federal employee's and the reason for their removal from the VA Hospital in Miami, Florida. From 1970 through present.

If you deny all or part of this request, please cite each specific exemption you think justifies you refusal to release the information and notify me of appeal procedures available under the law.

Sincerely,

Jose J. Hofos
P.O. BOX 112514
Hialeah, FL 33011-2514

cc: Judge, Ungaro-Benages

APPENDIX E-ORDER OF THE ELEVENTH CIRCUIT JUDGEMENT AGAINST PLAINTIFF PAY COST DATED APRIL 13, 1999.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-4178
Non-Argument Calendar
District Ct. No. 95-2256

JOSE J. HOYOS, Individually and
on behalf of all other persons
similarly situated,

Plaintiff-Appellees,

v.

UNITED STATES OF AMERICA
DEPARTMENT OF VETERANS AFFAIRS,
et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

Before ANDERSON, CARNES and MARCUS, Circuit Judges.

J U D G M E N T

This cause came to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the records and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the orders of the District Court appealed from in this cause be and the same hereby AFFIRMED;

Appeal. E

It is FURTHER ORDERED THAT plaintiff-appellant pay to the defendants-appellees, the costs on appeal to be taxed by the Clerk of Court.

Entered Feb. 1, 1999

ISSUED AS MANDATE: April 13 1999.